

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Class A On Sale
Liquor License with Sunday Sale held by
Midwest Latino Entertainment & Talent,
Inc.

ORDER ON MOTION IN LIMINE

The above-entitled matter was scheduled for hearing before Administrative Law Judge Raymond R. Krause ("ALJ") on October 8, 2009 on Respondent's Motion in Limine.

Joel Fussy, Assistant Minneapolis City Attorney, appeared on behalf of the City of Minneapolis (the City). Boris Parker, Attorney at Law, appeared on behalf of the Respondent.

Respondent's motion asks the ALJ to exclude several types of evidence from the hearing.

IT IS HEREBY ORDERED:

1. The Motion in Limine is hereby DENIED.
2. The hearing in this matter is set for **January 25, 26, 28, and 29, 2009**, beginning at 9:00 a.m. at the Office of Administrative Hearings.

Dated: October 13, 2009

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

MEMORANDUM

Evidence of Violations Occurring Prior to September 25, 2008

Respondent requests that any evidence of violations of the Minneapolis code prior to September 25, 2008, be excluded from the hearing. On September 25, 2008, Respondent and the City settled several outstanding violations. The Director of Licensing stated in correspondence to the City Council that, as a result of the settlement agreements, "overall the business is in compliance with licensing standards." He then recommended that the Council approve the license. The City Council subsequently did approve the license.

Respondent argues that the legal principles of res judicata, estoppel, and laches all prevent such evidence from coming into the record. Essentially, Respondent argues that since the settlement on September 25, 2008, brought Respondent into substantial compliance, the City cannot now resurrect previous violations in order to substantiate a heavier penalty if the current violations are proven. Respondent maintains that if the previous violations are to be used it must go back several years to find witnesses and other evidence to try to refute those charges.

The City responds that these previous violations are simply evidence that supports progressive discipline in addition to any discipline arising from the alleged violations that are the subject of this action. The City simply asks the ALJ to take judicial notice of these violations when considering a recommendation to the City Council. Furthermore, the City's position is that previous violations were resolved against Respondent either by paying the requisite fine or as part of the settlement agreement of September 25, 2008. The City contends that they do not need to be litigated now since they were essentially admitted through the payment of the fine or as part of the settlement.

Evidence of previous violations, used as a basis to justify progressive discipline, is a commonly accepted practice in licensing schemes of all kinds.¹ Respondent had the opportunity to appeal the charges and chose not to do so. The fact that Respondent chose not to contest the alleged violations in previous years and chose instead to pay the administrative citation or resolve the alleged violations through settlement rather than litigation, does not now entitle Respondent to claim innocence or prevent the City from citing them as part of Respondents administrative history.

Violations Occurring Outside the Premises

Respondent next moves to exclude any evidence of conduct occurring outside of its premises. Respondent cites *In re On-Sale Liquor License*, 763 N.W. 2d 359 (Minn. App. 2009) (the Gabby's decision). The ALJ recognizes the precedent set by this case;

¹ See *In the Matter of the Grocery Food and Tobacco Dealer Licenses Held by Amina, Inc. d/b/a 4-You Foods*, OAH No. 11 6010-17272-3; and *In the Matter of the Grocery and Tobacco Dealer License Held by Uncle Bill's Market Inc.*, OAH No. 7-6010-17292-3.

however, the Notice of Hearing is replete with charges occurring on premises. While the Notice does contain some allegations that may be considered “off-premises” it is unclear given the information in the Notice, whether those charges should properly be excluded under the “Gabby’s” decision. It is improper to issue a blanket exclusion when it is unclear what, if any, evidence the City will offer in this regard. This can be done through objections during the course of the hearing.

Hearsay Evidence

Respondent seeks to have the ALJ exclude evidence which may be offered that is considered double hearsay. The rules that apply to contested case hearings under Chapter 14, allow for the admission of hearsay that possesses probative value commonly accepted by prudent persons in the conduct of their affairs. It is premature to exclude the evidence purely on the basis that it is hearsay. Once the ALJ has the opportunity to hear or see such evidence, the ALJ may reject it, accept it or vary the weight he gives such evidence, based on its credibility.

R. R. K.